Supreme Court, U.S.
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In The

Supreme Court of the United States

WILLIAM B. LOTT, JR.,

Petitioner,

v.

EASTERN SHORE CHRISTIAN CENTER, INC. and ANTHONY LEGEAR,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Alabama

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a "Christian Center" organized as a corporation may assert the First Amendment as a bar to enforcement of a Member's statutory right of access to financial records?

2. Whether the courts below misapplied the First Amendment to evade oversight or discovery of financial improprieties?

3. The extent to which First Amendment concerns with neutrality in church litigation is affected by voluntary organization subject to corporate statutes?

LIST OF PARTIES

William B. Lott, Jr. was the Petitioner below and is Petitioner here.

Eastern Shore Christian Center, Inc. and Anthony Legear were Respondents below, and are Respondents here.

STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

As required by Rule 29.6, Petitioner certifies there are no publicly held companies involved in this matter.

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PETITION FOR WRIT OF CERTIORARI

William B. Lott, Jr. ("Lott") respectfully petitions that a writ of *certiorari* issue to review the January 14, 2005 decision of the Alabama Supreme Court construing the First Amendment as a bar to certain vested rights, provided by State statute.

OPINIONS BELOW

The January 14, 2005 decision from the Supreme Court of Alabama (App. A) affirming the Trial Court is reported at ___ So. 2d ___ (Ala. 2005). The March 11, 2005 decision from the Alabama Supreme Court denying rehearing (App. B) is reported at ____ So. 2d ____ (Ala. 2005). The decision of the Trial Court on July 22, 2004 (App. C) is unreported.

JURISDICTION

On March 11, 2005 the Supreme Court of Alabama denied Petitioner's Application for Rehearing which challenged the First Amendment basis of the initial Alabama Supreme Court decision. On January 14, 2005 the Supreme Court of Alabama affirmed the Trial Court rulings subject of the appeal which were adverse to Petitioner and, for the first time, asserted First Amendment grounds for the decision to affirm the Trial Court. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a) for *certiorari* review of a decision by the highest court of a State construing rights provided by the Constitution of the United States.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Alabama Nonprofit Corporations Act provides that all books and records of a Nonprofit corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time. §10-3A-43, Ala. Code (1975). The statutory provision is as follows:

> Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in Alabama a record of the names and addresses of its members entitled to vote, directors and officers. All books and records of a corporation may be inspected by any member, director or officer, or his agent or attorney, for any proper purpose at any reasonable time.

§10-3A-43, Ala. Code (1975).

This foregoing statute was applied to a Church organized as a Nonprofit Corporation under Alabama law, within the context of the First Amendment. The First Amendment is as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution, Amendment No. 1.

STATEMENT OF THE CASE

This case was filed in State Court to enforce a member's statutory access to financial records of a Nonprofit Corporation, Eastern Shore Christian Center Inc. ("ESCC") and its self styled CEO[1] Anthony Legear ("Legear"). After informal efforts over a period of several months were unsuccessful, Petitioner Lott filed an action for discovery and access to records. The specific focus of the litigation was inspection and copying of financial records and a deposition of the Pastor Legear through a Rule 27[2] discovery procedure and verified Complaint for Declaratory and Injunctive relief.

The Trial Court considered the matter in chambers and denied the parties a hearing, or opportunity to present evidence, or call witnesses. The Court did not examine any of the records in issue. After a summary proceeding, the Trial Court nevertheless orally ordered production of records in chambers (Transcript excerpt, R. 20, App. C), and in a later written order which followed a few days later (App. B), but denied further relief requested to maintain the *status quo* pending compliance with the order. In chambers the Court was made aware that Respondents would attempt to evade the document production by acting unilaterally to terminate Lott's membership (Transcript excerpt, R. 20, App. C). The following exchange is significant:

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[1] Consistent with the corporate structure of the organization, Respondent Legear preferred to be identified as "CEO" rather than as a preacher or Senior Pastor.

[2] Discovery prior to commencement of litigation was invoked pursuant to Rule 27, Ala. R. Civ. P.

> Q. [W]ill the right to inspect and copy continue after an official action of the board?
>
> A. THE COURT: I don't know the answer to that question.
>
> * * *
>
> [T]hat's a question that might arise in the future, but right now, at the time I'm issuing the ruling he is a member of a nonprofit corporation. . . . And, you know, if there are other questions that are proper for the Court to answer, I will. And then depending upon who's dissatisfied, a higher court can rule. . . .

(App. C). As the Trial Judge put it "depending upon who's dissatisfied, a higher court can rule." *Id.* Lott had requested a temporary restraining order to prevent termination of membership pending Respondents' compliance with the Court order.

Before the written order to produce records was issued, however, the day after the in chambers ruling, Respondents purported to terminate Lott's membership unilaterally[3] and, on that basis, successfully avoided further efforts to fully enforce the order to produce records for copying. The Trial Court, citing reluctance to get involved in a Church membership dispute then, inexplicably, excused any further compliance by Respondents with either its oral or written order to produce records. The Trial Court excused compliance and denied subsequent Motions to Compel and Contempt Motions, having previously observed that a "higher court" would have to decide

[3] Lott was not given notice of the time and place of the meeting, or opportunity to participate.

the issues. The Trial Court nevertheless required that the records be preserved pending appeal, so the issues remain ripe for review.

The Alabama Supreme Court affirmed based on a finding that termination of Lott's membership the day after the in chambers proceeding, and in retaliation for the Trial Court order, abated any right of access and copying. In deciding the issue, the Alabama Supreme Court, for the first time, cited the First Amendment as a basis for its decision affirming the Trial Court which had excused production of records.

The Alabama Supreme Court held the First Amendment barred enforcement of the discovery order by operation of the putative membership termination. The Court concluded that there was no right to be free from arbitrary action of an ecclesiastical body[4] (App. A). The statutory right of access to records based on Nonprofit Corporate status, however, and enforcement of a discovery order based on Lott's standing at the time the order was entered, should have been viewed independently of any First Amendment concerns.[5] Further, because the Respondents had organized as a Corporation, and invoked the benefits

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[4] As noted, the organization held itself out as a nonprofit corporation and Christian center.

[5] Membership at the time of filing suit provided standing based on the analogy considering a shareholder's standing at the time of filing suit. *Green v. Bradley Constr. Inc.*, 431 Ala. 1226 (Ala. 1983). Standing at the outset of litigation should not be affected by a subsequent change. *Thurston v. Dekle*, 531 F. 2d 1264 (5th Cir. 1976). Standing was proper under the 'wrongs capable of repetition' standard. *United States v. W. T. Grant Co.*, 345 U.S. 629 (1953). Respondents were quite paranoid concerning financial oversight as they had a "watchdog" with video apparatus attend this brief inspection.

of nonprofit status under the governing Alabama statutes,[6] the Alabama Courts and Respondents should have been *estopped* from asserting the First Amendment as an excuse, to permit Respondents to repress evidence of financial improprieties.[7]

This petition for *certiorari* review followed because the First Amendment was mis-applied to subvert the Alabama records statute – a vested statutory right under State law, and improperly excuse Respondents from court ordered financial disclosure. Further, as will be shown, the decision of the Alabama Supreme Court was inconsistent with First Amendment case law which requires that the First Amendment be applied in a neutral manner so that the propriety of membership termination could necessarily be considered in the context of prior enforcement of the records statute and discovery order.

The actions of the Alabama courts were anything but neutral.

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[6] Respondent was organized pursuant to the Alabama Nonprofit Corporation statutes, §§10-3A-1 *et seq.*, Ala. Code (1975).

[7] Lott's concerns had merit as there was a brief review, but no copying, of records for a few hours on the afternoon of the in-chambers ruling. At this limited review, it was apparent that Legear had mis-applied "church" funds for personal expenses, and had disregarded any requirement to maintain board minutes (there were none) and other requisite corporate formalities.

ARGUMENT – REASONS FOR GRANTING THE WRIT

A. The First Amendment requires neutrality.

The First Amendment requires neutrality in church litigation. *Presbyterian Church v. Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Maryland and Virginia Eldership of the Churches of God v. Church of God of Sharpsburg*, 396 U.S. 367 (1970). This doctrine means that the courts have a more limited role by applying only neutral principles, applicable to all cases, so as to filter out judicial determination of potential doctrinal or ecclesiastical disputes. This does not mean, however, that doctrinal issues may be used to evade an otherwise justiciable controversy.

B. Respondents cannot walk in and out of corporate *versus* congregational status to suit their needs without regard to the First Amendment.

This case presents a unique situation where the Respondents, although denominated as an Assembly of God Church, actually chose to organize as a Nonprofit Corporation. Even its name "Eastern Shore Christian Center Inc." connotes a community center styled nonprofit, membership organization rather than purely a church. The center buildings also connote a community center atmosphere with an emphasis on multi-purpose structures with folding chairs for recreational activities and concert performances, rather than a sanctuary with stained glass, fixed pews, pulpit, and other *indicia* of a more traditional church facility.

Consistent with this purpose, the governing charter was filed with an Alabama Probate Court as a Nonprofit

Corporation. Consequently, as a Nonprofit Corporation, the Respondents consented to and approved application of certain Alabama statutes and, notably, the statute in question which guaranteed the right of access to financial records of "any member." §10-3A-43, Ala. Code (1975). This court is therefore requested to grant the writ to determine that there was no First Amendment sanction for the Alabama Court action which permitted Respondents' evasion of the records disclosure statute by a carefully orchestrated *ad hoc* meeting to terminate membership of Lott in response to the order for production and copying of records.

Respondents are not free to walk in and out of church or corporate status, however, depending on the particular needs at hand. As a nonprofit corporation operating as a "christian center" it may not, when convenient, morph into a more traditional church in order to evade financial oversight and rights provided by statute. By electing corporate status, the Respondents were bound by the remainder of the corporate statutes which imposed a limitation on secrecy of financial records and sole control by Respondent Legear. Consistent with the corporate framework of the organization, as noted, Legear preferred to be identified as Chief Executive Officer rather than as a Pastor.

C. Respondents waived or are *estopped* to assert the First Amendment as a complete bar to financial oversight, by virtue of voluntary formation as a nonprofit corporation, rather than as a purely congregational church, and thus are subject to State law protections for Members of a nonprofit corporation.

When the corporate form became inconvenient, however, as Lott was close to discovering the full extent of

financial improprieties and relatively free spending habits of the self-styled CEO, Respondents reverted to more convenient congregational church labels. By invoking church labels at the crucial times, Respondents convinced a rural Alabama Judge to renege on its prior order to enforce statutory right of access[8] to corporate records. The Alabama Supreme Court followed suit, no doubt more concerned with politics of the religious right, than consistent adherence to the tenets of Federal law and the First Amendment. The First Amendment, however, is not a vehicle for the lower Courts and elected Judges to pander to local politics, or should not be, but is instead a consistently applied Constitutional guarantee for enforcement of neutrality and fundamental fairness.

The Alabama Supreme Court asserted the First Amendment to justify affirmance of the trial judge finding that it could not consider the merits of the termination of membership.[9] Because the membership action came *after* the Trial Court order, it should have had no bearing on the issues. This action, *i.e.*, the refusal to consider the impropriety of the termination, or whether the meeting was properly called, was inconsistent with First Amendment

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[8] A protected property interest can be created by state statute. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

[9] The Alabama Court disregarded the violation of the court ordered production of documents by determining that it was "constrained by the First Amendment . . . from 'intrud[ing] into a religious organization's determination of . . . ecclesiastical matters such as theological doctrine, *church discipline*, or the conformity of members to standards of faith and morality.'" Slip op. at 11 (emphasis in original), *citing Singh v. Singh*, 114 Cal. App. 4th 1264, 1275, 9 Cal. Rptr. 3d 4, 12 (Ct. App. 2004) and the First Amendment. *Id.*

and related precedent[10] in which courts, consistent with First Amendment guarantees, should make a threshold determination if the meeting was properly called.[11] This is particularly true where, as here, the Church is organized first and foremost, not as a congregational church, but as an Alabama Nonprofit Corporation – complete with a community center styled multi-purpose recreational facility governed by a nonprofit board and self-styled CEO.

The corporate *status* of an erstwhile church is the key factor that distinguishes this case from other First Amendment litigation and requires granting of the writ. Because of this hybrid status, the lower courts erred in stated reliance on the First Amendment to avoid the dispute and sanction the Respondents' evasion of disclosure. This Court is, therefore, requested to clarify the parameters in which the lower Courts may, consistent with the First Amendment, enforce statutory rights such as the requested Member's access to records, particularly where the Respondents voluntarily assumed the benefits and burdens of the Alabama corporate statutes. The statutory right of access to records should have been protected from the arbitrary acts of the Respondents.

Not only could the lower courts enforce the access to records, but in doing so, it should have considered

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[10] *Bouldin v. Alexander*, 15 Wall. 131, 140, 21 L. Ed. 69, 71-72 (1872) ("[w]e may inquire whether the resolution of expulsion was the act of the church. . . .")

[11] Courts may, for example, consider whether a church meeting was properly called, whether preceded by adequate notice, and whether once called the meeting was conducted in an orderly manner, and expulsion an act of the authority within the church. *Yates v. El Bethel Primitive Baptist Church*, 847 So. 2d 331 (Ala. 2002).

the *bona fides* of the *ad hoc* meeting terminating membership[12] in retaliation for the order to produce records. In considering the impropriety of the meeting, the lower courts should have considered if it was regularly called,[13] as it was not, reviewed bylaws which were offered, or required full disclosure of governing rules, and considered if the meeting was consistent with Alabama statutes and the bylaws of the organization. It was error to deny any relief without a hearing.[14]

For the foregoing reasons, the Writ should be granted. The Alabama Supreme Court, on remand, should be required to reverse the lower court to permit inspection and copying of records to go forward, and to stay any membership action pending compliance with the court order, and require further proceedings consistent with this Court's decision. In doing so, this Court may clarify First Amendment law jurisprudence so that nonprofit centers will be aware of the statutory limitations that are necessarily accepted when it is deemed more expedient to assume a

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[12] Alabama law recognizes that membership in a nonprofit is a property right which merits protection by the Courts. *Dawkins v. Walker*, 794 So. 2d 333 (Ala. 2001) (removal from a nonprofit sufficient injury to sustain a temporary restraining order).

[13] While the courts generally decline to consider the 'fruits of the meeting' if validly called, "[a] determination of whether the fundamentals of due process have been observed can be made in the judicial arena." *El Bethel, supra*, 847 So. 2d at 337. Other courts apply fundamental due process guarantees in this context and, in the absence of an evidentiary hearing in which rules of termination of membership were offered into evidence, there is persuasive authority that a Court could determine that notice and hearing were required. *Jones v. State*, 28 Neb. 495 (1890).

[14] Termination of a state benefit often requires a hearing and a more structured hearing is required where the evidence is largely subjective. *Goldberg v. Kelly*, 397 U.S. 254 (1970).

corporate *status* for its facilities, members and CEO, rather than pursue a purely congregational form. By organizing under the corporate laws, Respondents should be *estopped* to assert a purely congregational status for purposes of the First Amendment.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A
SUPREME COURT OF ALABAMA
OCTOBER TERM, 2004-2005

1031694

William B. Lott, Jr.

v.

Eastern Shore Christian Center and Anthony Legear

Appeal from Baldwin Circuit Court

(CV-04-853.00)

WOODALL, Justice.

William B. Lott, Jr., appeals from the denial of three motions, namely, a motion for a temporary restraining order ("TRO"), and two motions for rule nisi. We affirm.

The motion for a TRO was one of two documents Lott filed on July 19, 2004, seeking relief against the Eastern Shore Christian Center, an Assembly of God church located in Daphne ("the Church"), of which he was a member, and its senior pastor, Anthony Legear. The other document was a "Verified Petition to Obtain Discovery and Complaint for Other Relief" ("the discovery petition"). The discovery petition sought an order requiring the Church to make certain of its financial records available to Lott for inspection and copying. It also sought an order "[a]uthorizing counsel for [Lott] to conduct a deposition of Pastor Legear, following review of the [records]."

The motion for a TRO sought an order restraining the Church from taking disciplinary action against Lott, in particular, from taking disciplinary action in the form of "expulsion from Church membership." More specifically, the motion stated:

> "It is further demonstrated by verification of [Lott] that [the Church], in response to prior requests by [Lott] and other members sharing his concerns, for access to records as aforesaid that [the Church has attempted] to condition review of records on dismissal of this action, on limitation on rights of access and copying, and ultimately, *when agreement could not be reached for access and copying of records*, [the Church has] threatened the undersigned counsel to 'address discipline of your clients which includes expulsion from the church membership'. . . ."

(Some emphasis added; some emphasis omitted.)

The following day, the trial court conducted a hearing on the discovery petition and the motion for a TRO. At the conclusion of the hearing, the trial judge orally granted the discovery petition, stating, in pertinent part:

> "I will enter an order allowing [Lott] to inspect and copy the financial records of the Church, which, I would assume, would be bank statements, credit card statements . . . and if they have maintained a ledger with journal entries, . . . that sort of stuff. . . . That would allow [Lott] to obtain the information that he wants to obtain. . . ."

However, the court denied the TRO motion, stating, in part:

> "But I can tell you that *this judge isn't going to get involved in the government of a church*, because *I don't think I have any jurisdiction over who is a member, or not a member*, or what is contained in the constitution or the bylaws or anything of that nature. So the court is going to deny the application for the TRO respecting the restraining order from the church taking any action against the members to . . . discipline [them]."

(Emphasis added.)

Meanwhile, that same day, at a meeting of Legear and the other members of the Church's "official board,"[1] the board unanimously voted to "rescind and withdraw" the names of Lott and his wife "from the current membership roster." Lott was informed of the board's action by a letter dated July 20, 2004, which stated:

> "At a meeting today of the Official Board of Eastern Shore Christian Center it was the unanimous decision of said Board to rescind and withdraw your names from the current membership roster.
>
> "This decision is in compliance with both our Constitutional Documents and the Holy Scriptures which direct Church leaders in matters of spiritual conduct and oversight.
>
> "Bylaws – Article III – Sections 3 & 5 Discipline of Members; Severance of Membership; Article III-Section 1(d)

[1] According to the bylaws of the Church, the board was to be composed of the senior pastor and "five men of mature Christian experience and knowledge" elected from the membership of the Church.

> "It is the observation of this Board that Bill and Edyie Lott have been *aggressively contributing to the division within the Church Body – exhibiting a disruptive and divisive spirit contrary to the spirit of Christ and the character of goodness prescribed in the scriptures* (Titus 3:1-15; Matt. 18:15-18; Proverbs 6:16-19; I Cor. 5:11). It is also very clear that the Lotts *reject Pastoral leadership and are aggressively engaged in encouraging others in an attempt to further disrupt the congregation.*
>
> "This Board, in behalf of the Congregation, hereby disqualifies your membership and removes your names from the Assembly rolls. Per the Constitution & Bylaws of our Fellowship, those whose names have been removed *may appeal to the Board in writing. Any review of such appeal and subsequent action by the Board will be considered final* (Bylaws – Section 5)."

(Emphasis added.)

The following day, July 21, 2004, Lott filed his first motion for a rule nisi, namely, a "Motion for Order to Show Cause Why Respondents Should Not Be Held in Contempt." It stated:

> "[Lott] moves the court for an order to show cause why [the Church and Legear] should not be held in contempt for failure to comply with the court ruling of July 20, 2004, providing that 'any member' may inspect and copy financial records, and as grounds therefor shows as follows:
>
> "1. Following the court ruling, Member Steve Ingersoll has been refused access to inspect and copy records of [the Church] for the stated reason

that only Mr. Lott could inspect and copy. This is inconsistent with the court's ruling.

"2. [The Church and Legear] have also, in contravention of bylaws of [the Church], purported to terminate membership of Petitioner, William B. Lott, Jr., and threatened to terminate other members, without following notice and procedure required by bylaws and/or the Assembly of God organization. . . .

"3. [The Church and Legear] have advised counsel that a special meeting on July 20, 2004, purported to terminate membership and [the Church and Legear] failed to provide at least fourteen (14) days notice as required by Article VIII, Sec. 2 and 3 of the bylaws. . . .

"4. On enforcement of contempt powers, *the court should set aside this membership action* based on violation of [Lott's] property interests and due process rights. Jurisdiction is supported by *Yates v. El Bethel Primitive Baptist Church*, 847 So. 2d 331 (Ala. 2002), where the trial court action was affirmed, in setting aside a due process violation, where the church contravened its own procedures. The basis of the ruling was, in part, a consideration whether the church business in question 'was preceded by adequate notice to the full membership. . . .' *Id.* at 336.

"5. The court has jurisdiction to enter the requested relief in order to enforce its judgment of July 20, 2004, and punish the contempt of [the Church and Legear] in flagrant disregard and disrespect for the ruling of this court."

(Emphasis added.)

That same day, July 21, 2004, Lott's legal counsel received by facsimile a letter from counsel for Legear and the Church; that letter stated:

> "The Official Board of the [Church] met in a specially called meeting on July 20, 2004, and unanimously voted to sever your client's membership with the church for *violation of the membership standards as set forth in the constitution and the exhibition of a disruptive and divisive spirit contrary to spiritual guidelines*. . . .
>
> "A number of other individuals were subject to the same disciplinary action by the Church Board.
>
> "*As your client is no longer a member of the [Church], he nor his representatives will be allowed to review and copy documents of the Church.*
>
> "It is very unfortunate that the Church Board felt compelled to take such drastic action, but the unity of the Church is of foremost importance to the Board."

(Emphasis added.)

On July 23, 2004, Lott's counsel received another letter from the Church's counsel by facsimile transmission; that letter stated:

> "I have been contacted by numerous staff members and Board Members regarding your client's conduct. Mr. Lott has been harassing [Legear] on the phone, repeatedly going to the church premises and causing severe disruption, as well as attempting to involve the Daphne Police Department by having an officer appear at the church 'to witness Bill "serving" documents upon a staff member.'

> *"It is this irrational disruptive course of conduct that Mr. Lott and several other former members of the church have been engaged in that led [to] their severance.* Please advise your client to immediately cease any further contact with [Legear] or the Board Members. Also, advise your client that he is *no longer allowed on the premises of the [Church].* If he returns after warning, this activity will be considered a criminal trespass."

(Some emphasis added; some emphasis omitted.)

Meanwhile, on July 22, 2004, Lott filed a second "Motion for Order to Show Cause Why Respondents Should Not Be Held in Contempt." In addition to the grounds stated in the first motion, the second motion alleged: "Following receipt of the ruling in chambers on July 20, 2004 . . . , [the Church and Legear] have exhibited contempt for the court by refusing [Lott's] request for access and copying of records." On July 30, 2004, Lott filed a "motion to compel and request for sanctions."

The trial court denied the two rule nisi motions, and declined to rule on the motion to compel. On August 3, 2004, Lott appealed from that denial and from the denial of his motion for a TRO.[2] We will first consider the motion for a TRO, which sought to *preempt* any disciplinary action by the Church. Next, we will address the *post*-disciplinary show-cause motions, which sought to hold the Church and Legear in contempt for not allowing discovery on the basis of the disciplinary action taken, i.e., for not allowing

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[2] The Church does not challenge the ruling on the discovery motion, which was resolved in Lott's *favor*.

discovery on the basis that Lott was no longer a member of the Church.

I. The Motion for a TRO

The elements required for the issuance of a TRO are the same as the elements required for the issuance of a preliminary injunction. *Butler v. Alabama Judicial Inquiry Comm'n*, 111 F. Supp. 2d 1224, 1229 (M.D. Ala. 2000); *United States v. Metropolitan Dade County*, 815 F. Supp. 1475, 1477 (S.D. Fla. 1993).

"A plaintiff seeking a [TRO] has the burden of demonstrating

> "'(1) that without the [TRO] the plaintiff would suffer immediate and irreparable injury; (2) that the plaintiff has no adequate remedy at law; (3) that the plaintiff has at least a *reasonable chance of success* on the ultimate merits of his case; and (4) that the hardship imposed on the defendant by the [TRO] would not unreasonably outweigh the benefit accruing to the plaintiff.'"

Ormco Corp. v. Johns, 869 So. 2d 1109, 1113 (Ala. 2003) (quoting *Perley v. Tapscan, Inc.*, 646 So. 2d 585, 587 (Ala. 1994)) (emphasis added). "[A] petition for a temporary restraining order . . . addresses itself to the sound discretion of the trial court," *Churchill v. Board of Trustees of Univ. of Alabama in Birmingham*, 409 So. 2d 1382, 1389 (Ala. 1982), *overruled on other grounds, Ex parte Waterjet Sys., Inc.*, 758 So. 2d 505 (Ala. 1999), and "[i]f no abuse of discretion is shown, [its] action will not be disturbed on appeal." *Falk v. Falk*, 355 So. 2d 722, 725 (Ala. Civ. App. 1978). Discretion is informed by the elements of a TRO, *Chase Manhattan Bank v. Dime Savings Bank of New*

York, 961 F. Supp. 275, 276 (M.D. Fla. 1997), with particular reference in this case to the plaintiff's chance of success on the merits.

It is undisputed that the Church is incorporated under the Alabama Nonprofit Corporation Act, Ala. Code 1975, §§ 10-3A-1 to -225 ("the Act"). Lott sought access to the Church's books and financial records on the basis of § 10-3A-43, which provides:

> "Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in Alabama a record of the names and addresses of its members entitled to vote, directors and officers. *All books and records of a corporation may be inspected by any member*, director or officer, or his agent or attorney, *for any proper purpose at any reasonable time.*"

(Emphasis added.)

Lott contends that it was both necessary and proper for the court to issue a TRO to preserve his membership in the Church, and, by extension, his right to inspect the books. "Unless the court acted to preserve [his] membership *status quo*, pending inspection," Lott insists, his "statutory right to inspect was rendered meaningless." Lott's brief, at 14. The trial court concluded that it had "no jurisdiction over the internal workings of a church group" under the facts of this case. Thus, the issue is whether the trial court exceeded its discretion in refusing to enjoin the Church from expelling Lott after he invoked his rights under § 10-3A-43. We hold that it did not.

Courts are constrained by the First Amendment of the United States Constitution from "intrud[ing] into a religious organization's determination of . . . ecclesiastical matters such as theological doctrine, *church discipline*, or the conformity of members to standards of faith and morality." *Singh v. Singh*, 114 Cal. App. 4th 1264, 1275, 9 Cal. Rptr. 3d 4, 12 (Ct. App. 2004) (emphasis added). "Of course, [Alabama] courts concerned with restraints under the First Amendment applicable to the states through the Fourteenth [Amendment] are bound by the authoritative interpretations of the First Amendment enunciated by the United States Supreme Court." 114 Cal. App. 4th at 1280, 9 Cal. Rptr. 3d at 16.

To be sure, this Court has reviewed the actions of churches in expelling members or electing officers. See, e.g., *Yates v. El Bethel Primitive Baptist Church*, 847 So. 2d 331 (Ala. 2002); *Abyssinia Missionary Baptist Church v. Nixon*, 340 So. 2d 746 (Ala. 1976); *In re Galilee Baptist Church*, 279 Ala. 393, 186 So. 2d 102 (1966). Jurisdiction was exercised in such cases, however, only insofar as "to determine whether an election meeting of a church, or a similar meeting, was conducted so improperly as to render its results void." *Yates*, 847 So. 2d at 335-36 (the trial court properly invalidated an election of deacons, where the election meeting (1) was irregular in "several material respects"; (2) was conducted to circumvent a prior, unappealed injunction; and (3) involved no "issues of differences in religious faith," "creed," or "ecclesiastical doctrine"). See *Nixon*, supra (in an appeal from the grant of the pastor's motion to dismiss filed pursuant to Ala. R. Civ. P. 12(b), former church members, alleging that they had been improperly expelled, were entitled to "present evidence" of invalidity or "[ir]regularity of the meeting" in which they

were expelled); *In re Galilee*, supra (court's inquiry was limited to whether the meeting convened for the pastor's removal was so irregular as to void the results).

Under certain circumstances, therefore, our courts have decided whether a church *had acted* in accordance with its established procedures. It does not follow, however, that a court may interfere in a disciplinary matter *before the church acts*. On the contrary, in an action to *preempt* church discipline, a federal district court has held that "[t]he mere expulsion from a religious society, with the exclusion from a religious community, is not a harm for which courts can grant a remedy." *Grunwald v. Bornfreund*, 696 F. Supp. 838, 840-41 (E.D.N.Y. 1988). See also *Alexander v. Shiloh Baptist Church*, 62 Ohio Misc. 2d 79, 592 N.E.2d 918 (1991).

Grunwald involved an action by Yudah Grunwald against Ben Zion Bornfreund and others, alleging that the defendants had engaged in a fraudulent investment scheme, in violation of state and federal law, including the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1962. *Grunwald v. Bornfreund*, 668 F. Supp. 128, 130 (E.D.N.Y. 1987). Grunwald moved for a writ of mandamus, "prohibiting the 'Central Rabbinical Congress of the United States and Canada, its Rabbinical Court and its members' . . . from temporarily or permanently excommunicating [him]" from the "branch of Orthodox Judaism" of which he was a member. 696 F. Supp. at 839. The threat of excommunication was allegedly intended to pressure Grunwald into dismissing his action. 696 F. Supp. at 839-40. The court denied the motion and declined to issue the writ, explaining that "the threat of excommunication" was "not a harm for which courts will provide a remedy." 696 F. Supp. at 840.

As exemplified by *Grunwald*, this case differs fundamentally from the cases cited by Lott, which involved no disciplinary issues, or which involved *post*-expulsion procedural challenges. See, e.g., *Mount Zion Baptist Church v. Second Baptist Church of Reno*, 83 Nev. 367, 432 P.2d 328 (1967); *Baugh v. Thomas*, 56 N.J. 203, 265 A.2d 675 (1970); *Watson v. Christie*, 288 A.D.2d 29, 732 N.Y.S.2d 405 (2001).

The mere *threat* of expulsion, which is all the TRO motion in this case involved, obviously did not involve an issue regarding a secular, or neutral, procedural defect.[3] A challenge such as this one essentially alleges violation of a *substantive* right, such as a right to be free from the arbitrary action of an ecclesiastical body. However, the United States Supreme Court has clearly stated that no such right exists. *Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevich*, 426 U.S. 696 (1976).

In *Milivojevich*, the Court considered whether the Illinois Supreme Court had properly invalidated the decision of the Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church ("the Mother Church") to "defrock" Bishop Dionisije Milivojevich "on the ground that [the decision] was 'arbitrary' because a 'detailed review of the evidence disclose[d] that the proceedings resulting in Bishop Dionisije's removal and defrockment were not in accordance with the prescribed procedure of the constitution and the penal code of the Serbian Orthodox Church.'" 426 U.S. at 718. The Court

[3] This is so, because, when the TRO motion was filed, there had been no expulsion procedure, defective or otherwise.

held "that the inquiries made by the Illinois Supreme Court into matters of ecclesiastical cognizance and polity and the court's action pursuant thereto contravened the First and Fourteenth Amendments." 426 U.S. at 698. In doing so, it explained:

> "The conclusion of the Illinois Supreme Court that the decisions of the Mother Church were 'arbitrary' was grounded upon an inquiry that persuaded the Illinois Supreme Court that the Mother Church had not followed its own laws and procedures in arriving at those decisions. We have concluded that whether or not there is room for 'marginal civil court review' under the narrow rubrics of 'fraud' or 'collusion' when church tribunals act in bad faith for secular purposes, *no 'arbitrariness' exception in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations is consistent with the constitutional mandate* that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense 'arbitrary' *must inherently entail inquiry into* the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else into the *substantive criteria* by which they are supposedly to decide the ecclesiastical question. But *this is exactly the inquiry that the First Amendment prohibits*; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a

> civil court must accept the ecclesiastical decisions of church tribunals as it finds them. . . .
>
> "'. . . .'
>
> "Indeed, it is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria. *Constitutional concepts of due process, involving secular notions of 'fundamental fairness' or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance.*"

426 U.S. at 712-16 (emphasis added; footnotes omitted). See also *Kaufmann v. Sheehan*, 707 F.2d 355 (8th Cir. 1983); *Green v. United Pentecostal Church Int'l*, 899 S.W.2d 28 (Tex. Ct. App. 1995).

Milivojevich involved the discipline of a bishop, rather than a church member such as Lott. Nevertheless, "[f]or essentially the same reasons that courts have refused to interfere with the basic ecclesiastical decision of choosing the minister . . . , this Court must not interfere with the fundamental ecclesiastical concern of determining who is and who is not [a Church] member."[4] *Burgess v. Rock Creek Baptist Church*, 734 F. Supp. 30, 33 (D.D.C. 1990). See also *Kral v. Sisters of the Third Order Regular of St. Francis*, 746 F.2d 450 (8th Cir. 1984); *Nunn v. Black*, 506 F. Supp.

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[4] It is generally held that the same considerations apply, regardless of whether the church has a congregational, rather than a hierarchical, form of government. *First Baptist Church of Glen Este v. Ohio*, 591 F. Supp. 676 (S.D. Ohio 1983); *Heard v. Johnson*, 810 A.2d 871 (D.C. 2002); *Callahan v. First Congregational Church of Haverhill*, 441 Mass. 699, 808 N.E.2d 301 (2004); *Tubiolo v. Abundant Life Church, Inc.*, ___ N.C. App. ___, 605 S.E.2d 161 (2004).

444, 448 (W.D. Va.) ("the fact that the local church may have departed arbitrarily from its established expulsion procedures in removing the plaintiffs is of no constitutional consequence, whether one appeals the First, Fifth, or Fourteenth Amendments"), *aff'd*, 661 F.2d 925 (4th Cir. 1981); *Caples v. Nazareth Church of Hopewell Ass'n*, 245 Ala. 656, 660, 18 So. 2d 383, 386 (1944) ("'we have no power to revise or question ordinary acts of church membership, or of excision from membership'").

Lott's motion stated no grounds for a TRO, other than an allegedly intractable disagreement over "rights of access [to] and copying [of] Church records." In seeking to preempt church discipline on these grounds, the motion for a TRO essentially invited the court to become embroiled in the merits of a "fundamental ecclesiastical concern" with which the courts must have nothing to do, namely, "determining who is and who is not [a Church] member." *Burgess*, 734 F. Supp. at 33. Lott has cited no case preempting ecclesiastical discipline as he urged the trial court to do, and we have found none. Because Lott failed to show a "reasonable chance of success on the merits," the trial court did not err in denying his motion for a TRO.

II. The Rule Nisi Motions

In his post-expulsion rule nisi motions, Lott sought to hold the Church in contempt of the trial court's discovery order. In the second such motion, Lott alleged that the Church "purported to terminate [his membership] ... *without following notice and procedure* required by bylaws [of] the Assembly of God organization, and governing Alabama Code provisions." (Emphasis added.) He also moved to "set aside the adverse membership action,"

thereby essentially reinstating his membership. These motions were also without merit.

"'[W]hether a party is in contempt of court is a determination committed to the sound discretion of the trial court, and, absent an abuse of that discretion or unless the judgment of the trial court is unsupported by the evidence so as to be plainly and palpably wrong, this court will affirm.'" *Crawford v. Gay*, 703 So. 2d 368, 371 (Ala. Civ. App. 1996) (quoting *Stack v. Stack*, 646 So. 2d 51, 56 (Ala. Civ. App. 1994)).

It is well established that "[a] church member attacking a church decision may not obtain civil court review of that decision without first exhausting the church's internal appeal procedures." *Burgess*, 734 F. Supp. at 35 n.4 (citing *Milivojevich*, 426 U.S. at 710-11). See also *First Baptist Church of Glen Este v. Ohio*, 591 F. Supp. 676 (S.D. Ohio 1983); *State ex rel. Nelson v. Ellis*, 140 So. 2d 194, 197 (La. Ct. App. 1962) ("an expelled member, seeking reinstatement, must first exhaust his Church's internal laws and procedure, before the Church's duly constituted officers").

It is undisputed that the Church bylaws provide an internal review procedure, which Lott has not yet exhausted. More specifically, in his "motion to compel and request for sanctions," Lott asserted that "[t]he termination is not final because an internal appeal to the [Church's] Board is pending." Thus, he could have no right to an order reinstating his membership pending the Church's review of his expulsion.

The inability of the trial court to interfere with the disciplinary action resolves Lott's final contention, that is, that the Church is in contempt because it denied him

access to the premises, or to the Church records, on the ground that he is no longer a member. The issue is not whether he has standing to assert a substantive right, but whether that right has been *extinguished*.

On appeal, Lott *concedes* that his statutory right of access to the Church records arises out of his membership. Lott's brief, at 9, 14, and 22. The inspection rights guaranteed by § 10-3A-43 are specifically limited to "any *member*, director or officer [of the Church], or his agent or attorney." (Emphasis added.) Lott does not claim to be a "director or officer" in the Church.

The trial court could not, consistent with First Amendment jurisprudence, preserve Lott's membership as this case was procedurally postured. The termination of Lott's membership *abated* the right of inspection, pending a final resolution of the membership issue through the Church's appeal process. A contrary holding would be tantamount to a *de facto reinstatement* of membership, because it would compel the Church to treat Lott as a member despite his expulsion. This, the trial court could not do.

Finally, Lott seeks to assert the rights of certain nonparties, such as, "Member Steve Ingersoll." In that connection, Lott states: "Further, putative mootness of a representative's claim does not moot the entire action as long as other members have a controversy, under the 'wrongs capable of repetition' standard." Lott's brief, at 26. For that proposition, he cites *Moore v. Ogilvie*, 394 U.S. 814 (1969), for the holding as cited in *Rice v. Sinkfeld*, 732 So. 2d 993, 994 n.1 (Ala. 1998), namely, "that plaintiffs' challenge to state election law was not moot, even after the challenged election was completed, because the plaintiffs could challenge the law with respect to future elections." The

cases are obviously distinguishable. One involves the generally indefeasible voting franchise, while the other involves a defeasible Church membership and a right contingent on that membership.

This is not a class action, and Lott is not a class representative. He is the only plaintiff of record. He is thus confronted with the well-established rule that "'a litigant may not claim standing to assert the rights of a third party.'" *Ex parte Izundu*, 568 So. 2d 771, 772 (Ala. 1990) (quoting *Jersey Shore Med. Ctr.-Fitkin Hosp. v. Estate of Baum*, 84 N.J. 137, 417 A.2d 1003 (1980)). "A party lacks standing to invoke the power of the court in his behalf in the absence of a 'concrete stake in the outcome of the court's decision.'" 568 So. 2d at 772 (quoting *Brown Mech. Contractors, Inc. v. Centennial Ins. Co.*, 431 So. 2d 932, 937 (Ala. 1983)). Absent membership in the Church, Lott has no stake in the outcome of any discovery claim asserted by Steve Ingersoll or any other Church member, should one ever be asserted. Lott has standing to seek enforcement of the discovery order *only on his own behalf.*

For these reasons, the trial court did not exceed its discretion in denying the rule nisi and related motions for contempt.

The orders of the trial court denying the motion for a TRO and the rule nisi and related motions are affirmed.

AFFIRMED.

Nabers, C.J., and Houston, Johnstone, and Harwood, JJ., concur.

APPENDIX B

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

WILLIAM B. LOTT, JR.,	*	
Plaintiff,	*	CASE NO.
	*	CV-2004-853.00
vs.	*	
EASTERN SHORE CHRISTIAN CENTER, an Alabama nonprofit Corporation, and SENIOR PASTOR ANTHONY W. LEGEAR,	*	
Defendants.	*	

ORDER

This matter coming on for a hearing in chambers, it was submitted upon the application for a Temporary Restraining Order and a Petition authorizing discovery under Rule 27, ARCP, it was submitted upon the argument of counsel. Based on the foregoing, the court is of the opinion that the following order is due to be entered. It is therefore ORDERED, ADJUDGED and DECREED by the Circuit court of Baldwin County, Alabama, as follows:

1. The court denies the application for the Temporary Restraining Order seeking to enjoin the defendants from taking any church disciplinary actions and against the plaintiff for bring this action. The court is of the opinion that it has no jurisdiction over the internal workings of a church group unless it involves secular questions such as ownership and control over real and personal property.

2. The defendant corporation was organized under the Alabama Nonprofit Corporation statute. Therefore, the

plaintiff, William B. Lott, Jr., has a right to inspect any of the books and records of accounts of the nonprofit corporation. The court is of the opinion that with the advent of modern technology the right to inspect also includes the right to copy such books and records. The court hereby orders the defendants to allow the plaintiff to inspect and copy, at reasonable times, any of the books and records of the corporate defendant, including all ledgers, books of accounts, check books, bank statements and credit card statements. Said inspection and copying shall take place at the office of the corporate defendant and shall be done solely at the plaintiff's expense. The plaintiff shall reimburse the corporate defendant for the actual cost of making the copies or the plaintiff may employ a third-party copying service to make the copies.

3. The court enjoins all parties from disclosing or disseminating the results of any inspection, copying to any one other than an attorney representing the party or to an accountant or CPA firm employed by a party. The defendants may redact any portion of the minutes, except financial matters to protect privacy rights.

DONE, this the 22nd day of July 2004.

/s/ Charles Partin
CIRCUIT JUDGE

APPENDIX C

IN THE CIRCUIT COURT OF THE
TWENTY-EIGHTH JUDICIAL CIRCUIT OF ALABAMA
– BALDWIN COUNTY, ALABAMA –

WILLIAM B. LOTT, JR.,	)	
Plaintiff,	)	
vs.	)	CASE NO.: CV-04-853
EASTERN SHORE CHRISTIAN CENTER, etc.,	)	
Defendants.	)	

* * *

[R-20] MR. RYAN: Right.

THE COURT: To, in effect, offer aid and comfort to somebody that's adverse to the corporation.

But I can tell you that this judge isn't going to get involved in the government of a church because I don't think I have any jurisdiction over whose [sic] a member or not a member or what the, what's contained in the constitution or the bylaws or anything of that nature.

So the Court is going to deny the application for the T.R.O. respecting the restraining order from the church taking any action against the members to – I don't know whether y'all call it excommunicate or –

MR. RYAN: They call it, discipline is the term they use. Discipline.

THE COURT: Discipline. I'm obviously not familiar with the church's constitution.

MR. RYAN: Yes, sir.

THE COURT: But I will enter an order allowing the Plaintiff to inspect and copy the financial records of the church which I would assume would be bank statements, um, credit card [R-21] statements –

MR. RYAN: Yes, sir.

THE COURT: – um, and if they have maintained a ledger with journal entries, and that sort of stuff, that –

MR. RYAN: And all those are in a room. All the things you described in the last five years have been moved to one central location and they're available for inspection. We just did not, the Board didn't want the copies to be taken out of the church and that was the only issue.

MR. BUFFALOW: They have got somebody in there to monitor any copying. Even have a little video camera set up. That's fine. You know, somebody can watch it all.

THE COURT: I don't mind attaching a protective order that the Plaintiff not disseminate the information except to his accountant or lawyer. I mean, you know, not –

MR. RYAN: That would be great if we could have that. That might solve it.

THE COURT: That would allow the Plaintiff to obtain the information that he wants to obtain and –

MR. BUFFALOW: They could discuss it with [R-22] their accountant or their attorney and –

THE COURT: Yeah, but not get out –

MR. BUFFALOW: – apply to the Court if they wanted to communicate with a third party or something like that?

THE COURT: Right, but they wouldn't be able to go to the Kawanias(ph) [sic] Club or Rotary Club and say, you know, Pastor X –

MR. RYAN: Or other churches.

THE COURT: – is – yeah. You know, this is what the Eastern Shore Christian Center has, and –

MR. RYAN: Right. And that would –

MR. BUFFALOW: We also asked for minutes of meetings for about the last five years, bank reconciliations –

THE COURT: I don't know whether –

MR. BUFFALOW: – payroll records.

THE COURT: Do they have minutes of church meetings?

MR. RYAN: They do. And that's one of the things I expressed concern previously in talking to Mr. Buffalow. In meetings of the board they talk about benevolence for people, they talk about tithing, and there is a Lott [sic] of very [R-23] Personal, private information that occurs in the minutes of the churches that we object to disseminating because even discipline, matters of private discipline for members who have violated the tenements of the church and the board has acted –

MR. BUFFALOW: I don't have any problem with redacting stuff about private individuals and tithing and

that sort of thing. The minutes we are interested in have to deal with the financials. There's a bank loan, some dispute whether there is resolution authorizing the bank loan, payment of interest totally versus principle [sic]. So if they want to redact references to private names and how much money they're pledging or discipline, that's fair. Don't have any problem with that.

THE COURT: Well, that may take some time to accomplish.

MR. RYAN: Right.

MR. BUFFALOW: We can get that later.

MR. RYAN: That's again, I guess the concern of the board members who are here, that there is a group trying to take over the management and governance of the church making those type [R-24] decisions when these people are elected to be vested with that authority by the church congregation in accordance with the –

THE COURT: Well, I assume that the constitution sets out how the church is to be governed.

MR. RYAN: It does, yes, sir. And it provides the fiscal management of the church be vested with the official, what they call the official board, elected by members of the congregation. And there is a group that they want to basically take over and invade that responsibility. And it's a, it's an incredibility [sic] serious matter for this church.

MR. BUFFALOW: That's a line of argument. This is just access to records and information.

THE COURT: I think all the Court's order is doing is allowing the Plaintiff information that he is entitled to as a member of a nonprofit corporation.

Um, but like I said, the governance of the church and, you know, what the – I don't know whether they call them deacons or trustees or directors or elders or what –

MR. RYAN: Well, they call them official [R25] board.

THE COURT: I know nothing about this church, obviously.

MR. BUFFALOW: I have gone to two annual meetings, I think, in the last ten years and I couldn't tell you what the names of the people are in Mobile.

THE COURT: But how the church is, you know, run, isn't any of the Court's concern. And, um, and I'm not going to get involved in that.

MR. RYAN: Now, will your ruling apply to the – I don't know if this William B. Lott, Jr., the petitioner, is the bellwether [sic], if you will, for another group or if he's – he's the only one that's filed the petition seeking this relief. Does that apply cart [sic] blanche to whoever wants to ride on this train, if you will? I can think of a better description if you want to. Is he gonna –

THE COURT: Well, the order is going to be limited to William B. Lott, Jr. his attorney, and accountants.

Now if he's the, you know, the group leader, here again, I mean that's, that's his right too. I mean it's – if, um, I mean –

[R-26] MR. BUFFALOW: We named a few people in here that share his concerns and I think we had asked that Bill and his attorney and –

THE COURT: What I'm ruling is that any member of the church –

MR. RYAN: Yes, sir.

THE COURT: – as a member of a nonprofit corporation in Alabama would have access to the records and to copy them. Of course, all the copying is going to be at the Plaintiff's expense other than, you know, the overhead of the church to have somebody there, which I assume they've got a church secretary anyway.

MR. RYAN: Yes, sir, they do. And I guess my last question is based on what the board decided last Tuesday night, was in accordance with the constitution and bylaws on dispute resolution if they failed. This church ascribes to the principles taught in Matthew 18:15 as to when disputes may arise. And as a basis for discipline, if this person who is a member as we are speaking today in this court and others are, they're [sic] membership is terminated, will the right to inspect and copy continue forward after an official action of the board?

[R-27] THE COURT: I don't know the answer to that question.

MR. RYAN: Okay. That's something –

THE COURT: I mean, that's kind of –

MR. BUFFALOW: I think we're pressing our luck to get his decision on that today, but suffice it to say we may be back or –

MR. RYAN: I don't want to bother the Court with any additional –

THE COURT: I know, but I'm just saying that that's not – that's a question that might arise in the future, but right now, at the time I'm issuing the ruling he is a member of a nonprofit corporation

MR. RYAN: Yes, sir.

THE COURT: And, you know, if there are other questions that are proper for the Court to answer, I will. And then depending upon who's dissatisfied, a higher court can rule. All right, I will enter an order that incorporates what I have said I'm going to rule.

MR. RYAN: Yes, sir.

THE COURT: And, um, you know, I would anticipate that y'all would give them sufficient time to get everything copied.

APPENDIX D

IN THE SUPREME COURT OF ALABAMA

[COURT SEAL]

March 11, 2005

1031694

William B. Lott, Jr. v. Eastern Shore Christian Community Center and Anthony Legear (Appeal from Baldwin Circuit Court: CV-04-853.00).

ORDER

The application for rehearing filed in this cause is overruled.

WOODALL, J. – Nabers, C. J., and Harwood, Smith, and Parker, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instruments(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 11th day of March, 2005

/s/ ROBERT G. ESDALE, SR.

CLERK, SUPREME COURT OF ALABAMA

AUG 2 5

(2)

No. 04-1671

IN THE

Supreme Court of the United States

WILLIAM B. LOTT, JR.,

Petitioner,

v.

EASTERN SHORE CHRISTIAN CENTER
and ANTHONY LEGEAR,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Supreme Court of Alabama properly applied the First Amendment in refusing to interfere with a religious organization's determination of who may be a church member.

2. Whether a religious organization's status as an entity incorporated under Alabama law negates the application of the First Amendment to ecclesiastical matters, particularly church discipline.

3. Whether failure to exhaust ecclesiastical remedies within the church infrastructure bars petitioner's efforts to achieve relief through the court system.

CORPORATE DISCLOSURE STATEMENT

Respondent, Eastern Shore Christian Center, has no parent corporation and no publicly held company owns 10% or more of its stock.

Respondents Eastern Shore Christian Center (hereinafter "ESCC") and Anthony Legear (hereinafter "Pastor Legear") respectfully submit that the Petition for Writ of Certiorari filed by the Petitioners is due to be denied.

STATEMENT OF THE CASE

William B. Lott, Jr. (hereinafter "Lott"), a member of ESCC, filed a verified petition against ESCC and Pastor Legear seeking discovery of ESCC financial documents, an accounting of expenditures by ESCC and Pastor Legear, the deposition of Pastor Legear and a TRO prohibiting ESCC from taking disciplinary action against Lott by terminating his church membership. Upon conducting an in-chambers hearing, the trial court granted Lott's request for access to ESCC financial documents but denied his application for a TRO.

Following the hearing, the official board of ESCC unanimously voted to terminate Lott's membership in the church due to conduct violative of ESCC's tenets of faith. Subsequently, Lott filed two rule nisi motions and a motion to compel. The trial court denied both rule nisi motions and declined to rule on the motion to compel. Lott appealed the denial of his rule nisi motions and the denial of his motion for a TRO to the Supreme Court of Alabama.

The Alabama Supreme Court held that the trial court did not exceed its discretion in refusing to enjoin ESCC from terminating Lott's membership. The court noted that the mere threat of expulsion from a church does not involve secular, neutral or procedural defect issues, and that the court is constrained by the First Amendment of the United States Constitution from intruding into a religious organization's determination of ecclesiastical matters such as theological doctrine, church discipline, or the conformity of members to standards of faith and morality (Ala. Sup. Ct. Op. 1031694). The court concluded that Lott's motion for a TRO was essentially alleging a violation of a right to be free from the arbitrary action of an ecclesiastical body, and that no such right exists.

The Alabama Supreme Court further held that the trial court did not exceed its discretion in denying the rule nisi motions because Lott had not exhausted the church's internal appeals process prior to seeking court review of the church's decision, that his right of access to church records abated when his church membership was terminated (pending final resolution through the church's internal appeals process), and that Lott had no standing to seek enforcement of the trial court's discovery order on behalf of third parties.

Lott filed an application for rehearing with the Alabama Supreme Court and the same was denied.

REASONS FOR DENYING THE PETITION

I. Application of the First Amendment to ecclesiastical matters is not negated by virtue of a church's status as a corporate entity organized under the laws of the State of Alabama.

ESCC is organized as a nonprofit corporation under the Alabama Nonprofit Corporation Act, Ala. Code 1975, §10-3A-1, et seq. ("the Act"). Section 10-3A-43 of the Act, provides, "All books and records of a corporation may be inspected by any member, director or officer, or his agent or attorney, for any proper purpose at any reasonable time". Therefore, Lott, as a member of ESCC, had a statutory right to inspect ESCC financial documents, provided such inspection was for a proper purpose and at a reasonable time. However, Lott's ESCC membership was terminated upon unanimous vote of the official governing board of ESCC due to Lott's violation of ESCC's tenets of faith. Consequently, because Lott was no longer a member of the church, and neither was he an officer or director, he no longer had standing under the Act to review ESCC corporate records.

Lott attempts to circumvent the effect of termination of his church membership by arguing that standing to review records under the Act is determined at the time court action is instituted. However, Lott cites no direct authority for this proposition. His

argument is based on analogizing membership in an ecclesiastical body to that of a corporate shareholder. This analogy fails because status as a corporate shareholder is determined by applicable civil laws, whereas status as a church member is determined by ecclesiastical law and the First Amendment prohibits courts from interpreting ecclesiastical law, even where decisions based on such law may be arbitrary:

> For civil courts to analyze whether the ecclesiastical actions of a church judicatory in are that sense "arbitrary" must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else in to the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquire that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them.

Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevich, 426 U.S. 696, 713 (1976).

Lott further argues that he has standing to review ESCC records based on the wrongs capable of repetition standard. However, the Alabama Supreme Court rejected this argument, noting that Lott's standing is based on a right contingent on a defeasible church membership (Ala. Sup. Ct. Op. 1031694) and thus, "Lott has standing seek enforcement of the discovery order only on his own behalf." (Ala. Sup. Ct. Op. 1031694). Because Lott is no longer a member of ESCC, he has no right of access under §10-3A-43 of the Act to ESCC records.

II. A religious organization's status as an entity incorporated under Alabama law does not negate the application of the First Amendment to ecclesiastical matters, particularly church discipline.

Lott repeatedly focuses on the distinction between a traditional church (with a fixed pulpit, pews and stained glass) and a contemporary-style church such as ESCC (with multi-purpose buildings and folding chairs) in his petition. Essentially, Lott argues that because a contemporary-style church is not "traditional" that it is somehow not a church within the meaning of the law and should not be afforded the same First Amendment protection as "traditional" churches; rather it should be governed strictly as a corporate entity. This argument is simply ludicrous. ESCC is affiliated with the Assemblies of God and is governed accordingly. The type of furniture in the church buildings is wholly irrelevant to ESCC's status as a church. Essentially, Lott is asking this court to recognize form over substance and define a church as an ecclesiastical body that employs only "traditional" religious practices. It is this very type of action that the First Amendment was designed to protect against.

Lott again urges the court to apply form over substance when he argues that ESCC's congregational governance structure more closely resembles that of a corporation than a church, and thus, ESCC should be treated by the courts solely as a corporate entity and is not entitled to First Amendment protection. However, whether church governance is congregational or hierarchical, courts across the nation have routinely held that courts cannot interfere with ecclesiastical matters such as church discipline and the determination of church membership. *See Singh v. Singh*, 114 Cal. App. 4th 1264, 1275, 9 Cal. Rptr. 3d 4, 12 (Ct. App. 2004); *Burgess v. Rock Creek Baptist Church*, 734 F. Supp. 30, 33 (D.D.C. 1990); *First Baptist Church of Glen Este v. Ohio*, 591 F. Supp. 676 (S.D. Ohio 1983); *Callahan v. First Congregational Church of Haverhill*, 441 Mass. 699, 808 N.E. 2d 301 (2004). In fact, "questions of church discipline and the composition of the

church hierarchy are at the core of ecclesiastical concern" and thus, are not subject to review by the courts. *Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevich*, 426 U.S. 696, 717 (1976).

III. Failure to exhaust ecclesiastical remedies within the church infrastructure bars petitioner's efforts to achieve relief through the court system.

The constitution and bylaws of ESCC provide internal review procedures for church members dissatisfied with decisions of the church board. However, Lott filed his rule nisi motions in the trial court prior to exhausting the internal review procedures provided by ESCC. As the Alabama Supreme Court correctly noted, a church member must first exhaust the internal review procedures of an ecclesiastical body prior to seeking redress in the court system:

> It is well established that "a church member attacking a church decision may not obtain civil court review of that decision without first exhausting the church's internal appeal procedures." *Burgess v. Rock Creek Baptist Church*, 734 F. Supp. 30, 35 n.4 (D.D.C. 1990) (citing *Milivojevich*, 426 U.S. at 710-711). See also *First Baptist Church of Glen Este v. Ohio*, 591 F. Supp. 676 (S.D. Ohio 1983); *State ex rel. Nelson v. Ellis*, 140 So. 2d 194, 197 (La. Ct. App. 1962) ("an expelled member, seeking reinstatement, must first exhaust his Church's internal laws and procedure, before the Church's duly constituted officers").

(Ala. Sup. Ct. Op. 1031694). Consequently, because Lott failed to exhaust the internal review procedures of the church before seeking redress through the court system, the courts now have no legal authority to interfere with the disciplinary action taken by the church against Lott.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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